

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RODNEY POWELL,

Plaintiff,

vs.

Civ. No. 97-1178 WWD/RLP

DANNY CARTER, Individually, and as a
member of the HOBBS POLICE DEPARTMENT;
CITY OF HOBBS, and JOHN DOES I-V, and
KEELING PETROLEUM, FINA TRUCK STOP,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the court upon a Motion to Dismiss filed by Defendants Danny Carter, City of Hobbs, and Hobbs Police Department [docket no. 11] and a Motion to Dismiss filed by Defendants Keeling Petroleum and Fina Truck Stop [docket no. 15]. Both motions as well as the accompanying responses and replies were filed with the Court October 24, 1997. The first motion was served by mail on Plaintiff on September 8, 1997, and the second motion was served on Plaintiff by mail on September 11, 1997. On October 20, 1997, I granted Plaintiff leave to file a second amended complaint. That complaint, attached to the unopposed motion to amend as exhibit A, is now the complaint upon which this cause shall be tried. Given the aforementioned chronology, I am not willing to assume that the two aforementioned motions to dismiss are directed to the second amended complaint. Accordingly, I will deny those motions. In the event

that similar motions are filed in connection with the second amended complaint, they will be considered in due course.

WHEREFORE,

IT IS ORDERED that Defendants' Danny Carter, City of Hobbs and Hobbs Police Department Motion to Dismiss [docket no. 11] and Defendants' Keeling Petroleum and Fina Truck Stop Motion to Dismiss [docket no. 15] be, and they hereby are, **DENIED**.



United States Magistrate Judge